



***Board of Zoning Appeals Public Hearing
January 18, 2011 —7:00 P.M***

CASE NUMBER:	V-11-004
PROPERTY LOCATION:	1800 Block of Ballybunion Drive, Johns Creek, GA 30097 1st District, 1st Section Land Lot 339
CURRENT ZONING:	CUP Conditional (Community Unit Plan District)
PARCEL SIZE:	0.48 Acres
PROPERTY OWNER:	David Massey
PROPERTY AGENT:	Dwayne Johnson, Gibbs Landscape

REQUEST

The applicant requests a variance to encroach approximately 40 feet into the 50-foot undisturbed buffer and additional 25-foot impervious surface setback required by the City of Johns Creek to construct a terrace, stream/waterfall feature, and to replace an existing concrete walkway with a stone path, all contained in the side and rear yard of the property. The proposed improvement project consists of 550 square feet of additional impervious surface. The subject property is located in the St. Ives Country Club and a stream is located near the rear property line, along the edge of the golf course. The subject property was originally platted with a state mandated stream buffer requirement of 25 feet from the point of wretched vegetation. Fulton County, and subsequently the City of Johns Creek, has adopted the larger stream buffer standards of a 50-foot undisturbed buffer and an additional 25-foot impervious surface setback. The property is currently developed with a two story single-family dwelling.

ADJACENT ZONING AND LAND USES

The subject property is zoned CUP Conditional (Community Unit Plan District) and is located in the St. Ives Country Club. The subject property is located interior to the subdivision, and therefore is bounded by CUP Conditional zoned property on three sides and a golf course to the rear. South of said property are the Camden River apartments and the Medlock Corners shopping center, respectively zoned A Conditional (Medium Density Apartment District) and C-1 Conditional (Community Business District). Further east of the subject property is the Chattahoochee River, and to the west is an undeveloped O-I Conditional (Office Institutional District) zoned property adjacent to Medlock Bridge Road.

APPLICABLE CODE REQUIREMENTS

City Code; Chapter 109: Natural Resources & Environmental Protection; Article V: Stream Buffer Protection: Section 109-118: Land Development Requirements.

- (i) An undisturbed natural vegetative buffer shall be maintained for 50 feet, measured horizontally, on both banks (as applicable) of the stream as measured from the point of wretched vegetation.

- (ii) An additional setback shall be maintained for 25 feet, measured horizontally, beyond the undisturbed natural vegetative buffer, in which all impervious cover shall be prohibited. Grading, filling and earthmoving shall be minimized within the setback.

VARIANCE REQUIREMENTS

Staff is including the specific conditions that must be considered for a variance to be granted in an effort to assist the Board of Zoning Appeals in considering the application and its merits. These considerations include:

- (i) When a property's shape, topography or other physical conditions existing at the time of the adoption of this ordinance prevents land development unless a buffer variance is granted.
- (ii) Unusual circumstances when strict adherence to the minimal buffer requirements in the ordinance would create an extreme hardship.

ADDITIONAL STREAM BUFFER CONSIDERATIONS

Stream buffers are the areas of land immediately adjacent to the banks of state waters which facilitate the protection of water quality and aquatic habitat. Buffers also preserve green space, improve aesthetics, reduce stormwater runoff velocities, help control flooding, and keep stream water cool by providing shade. These buffers must remain undisturbed in their natural state during and after construction, however variances can be obtained that allow for encroachment under certain conditions. Stream buffers are regulated on both the state and local levels and each agency has different rules regarding buffer widths. The Georgia Environmental Protection Division (EPD) requires 25 foot buffers on both sides of a stream, measured from the point of wrested vegetation which is usually located at the tops of the banks. The City of Johns Creek requires an undisturbed buffer of 50 feet with an additional 25 feet where all impervious surfaces are prohibited. Variance applications may be granted on a case by case basis provided the applicant submit information showing the location of the stream, the extent of encroachment, and documentation of the unusual hardship should the buffer be maintained. These variance applications must also provide mitigation measures to offset the impacts of land development or disturbance on the proposed property. Although allowed by ordinance, granting of stream buffer variances should be kept to a practicable minimum in order to preserve water quality and minimize flood risks from future, upstream development. The location and extent of buffer encroachment, long term water quality impacts, and potential, less intrusive alternate designs are all factors to be considered in determining whether to issue a variance. Stream Buffer Variances granted by the City of Johns Creek are subject to annual audits by the Metropolitan North Georgia Water Planning District and the EPD. The City must ensure that consistency and thorough examination to long term impacts are considered in order to justify granting variances.

RECOMMENDATION

The subject property was originally platted with a stream buffer of 25 feet from the banks of the stream that is located along the golf course, adjacent to the rear yard. The applicant would like to construct a terrace and a stream/waterfall feature for entertaining purposes as well as greater usability of the rear yard, which would total 550 square feet of additional impervious surface. The proposed improvements would require a 40-foot encroachment into the 50-foot undisturbed buffer and additional 25-foot impervious surface setback.

The site plan submitted by the applicant illustrates that under the previous requirement, the proposed improvements could have been developed on the property without encroaching into and maintaining the original 25-foot stream buffer. With the adoption of the larger stream buffer standards of 50-foot undisturbed

buffer and additional 25-foot impervious surface setback by the city, a portion of the existing deck encroaches into the stream buffer. As part of the proposed improvement, the applicant has provided a revegetation/landscape plan to mitigate the requested encroachment into the stream buffer, resulting in a greater density of plant material. Although, the proposed improvements to the side and rear yards would encroach into the stream buffer, the improvements would be constructed outside the original 25-foot stream buffer, and also comply with the requirements of the zoning ordinance.

In light of the applicants' landscape and mitigation plan, the subject property having had the ability to implement improvements on the property without a variance based on the previous stream buffer requirement, and the proposed improvements not having an adverse effect on existing vegetation; the Department of Community and Development recommends **APPROVAL with conditions** of this request.

Based upon the findings and conclusions herein, Staff recommends **APPROVAL with conditions** of this request, subject to the following conditions of approval or as may be amended by the Board of Zoning Appeals:

- 1) The proposed improvements, which includes construction of a terrace, stream and waterfall feature, and replacement of the existing concrete walkway with natural stone steps in the side and rear yards, shall encroach no more than 40 feet in depth into the 50-foot undisturbed buffer and additional 25-foot impervious surface setback, as shown on the site plan dated December 14, 2010.
- 2) The proposed improvements shall not exceed 550 square feet of additional impervious surface.
- 3) Obtain required building permits from the City of Johns Creek Community Development Department prior to commencement of proposed improvements.
- 4) As part of the building permit, the applicant is to submit a copy of the mitigation plan that was provided with the variance application dated December 7, 2010. The mitigation plan must clearly depict the location, number, and plant material to be installed on the property.
- 5) The applicant is required, prior to issuance of a certificate of completion, to replant vegetation on the subject property, in order to offset any adverse impact associated with additional impervious surface closer to the stream. Replanting of vegetation shall be consistent with the mitigation plan submitted by the applicant to the Department of Community and Development on December 7, 2010.
- 6) All proposed improvements to the side and rear yard, as well as the plant materials to be installed as part of the mitigation plan must be located outside the platted 20-foot Sanitary Sewer Easement shown on the survey, unless an easement encroachment approval is acquired from the Fulton County Public Works Department.

Aerial and Vicinity Map

